



PUBLIC NOTICE

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DA 05-2662
October 6, 2005

NOTICE TO PARTICIPANTS IN THE 2002 ANNUAL CABLE PRICE SURVEY

Re: Release of Annual Cable Price Survey Data to the Federal Trade Commission

The Federal Trade Commission (FTC) is investigating the proposed acquisition of Adelphia Communications Corporation's (Adelphia) cable systems and assets by Time Warner Inc. (Time Warner) and Comcast Corporation (Comcast), along with other related transactions. In connection with this investigation, the FTC has requested access to cable price data that the Federal Communications Commission has collected pursuant to Section 623(k) of the Communications Act (47 U.S.C. § 543(k)).¹ Section 623(k) of the Act requires the Commission to publish an annual statistical report on cable television rates. In preparation for that report the Commission conducts an annual survey of a random sample of cable television operators. The data that is collected from the cable operators is considered part of the public record but the Commission has stipulated that it will not release any identifying information (*i.e.*, the identity of the cable television operators who have submitted particular data) to the public.

Specifically, the FTC has requested access to the data the Commission collected as part of its 2002 cable price survey. The Order requesting the data was adopted on May 30, 2002 (MM 92-266, DA 02-1285).

Commission regulations provide that parties who submit records to the Commission in confidence will be notified of the disclosure of those records to other Federal government agencies and will be afforded 10 days in which to oppose disclosure (47 C.F.R. § 0.442(d)(1)). Accordingly, this notice is being provided to cable operators who submitted data to the Commission in response to the 2002 cable price survey. If the Commission receives no opposition from affected parties within 10 days of this notice, the Commission will disclose the information requested above to the FTC. If disclosure is opposed, the procedures set forth in 47 C.F.R. § 0.442 shall apply.

¹ See Letter to Michael S. Perko, Chief, Office of Communications and Industry Information, Media Bureau, Federal Communications Commission, from Jill M. Frumin, Attorney, Bureau of Competition, Federal Trade Commission, dated October 5, 2005.

The FTC states in its request that its policy is to protect the confidentiality of sensitive information provided by its sources, and to prevent competitively sensitive information from being shared among competitors. Sensitive information includes "confidential business information" which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. Accordingly, sensitive information will only be used by the FTC for a legitimate law enforcement purpose, and it is the FTC's policy not to disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose. In the FTC's experience, the need to disclose sensitive material occurs rarely.

In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act (FOIA), the FTC will act in accordance with its stated policy (see 16 C.F.R. § 4.10, 4.11) and will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. § 552(b)(4), (b)(7)(A) and (b)(7)(D) (to the extent applicable). See also *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 880 (D.C. Cir.), *cert denied*, 113 S. Ct. 1579 (1992) (protection of voluntarily provided information).

Although it is the FTC's policy not unnecessarily to use sensitive information in complaints or court papers accompanying a complaint, which are publicly available documents, the FTC cannot provide an absolute assurance that sensitive information will not be included in such documents. If a complaint is filed, it is the FTC's policy to notify the concerned party as soon as is reasonably practicable of any decision to use confidential business information for the purpose of seeking preliminary relief. It is the FTC's policy generally to file under seal any confidential business information used for such purpose and advise the court that the information has been designated as confidential. Moreover, it is the FTC's policy to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until the concerned party has had a reasonable opportunity to appear before the court and until the court has ruled on the concerned party's application.

In the event of a request by a third party for disclosure of any appropriately designated confidential business information under any provision of law other than FOIA, it is the FTC's policy to assert all applicable exemptions from disclosure permitted by law. In addition, the FTC's policy is to use its best efforts to provide concerned parties such notice as is practicable prior to disclosure of any confidential business information to a third party who requests it under any provision of law other than the Freedom of Information Act.

If confidential business information becomes the subject of discovery in any litigation to which the FTC is a party, its policy is to use its best efforts to assure that a protective order applicable to the information is entered in the litigation. In addition, FTC policy is to not voluntarily produce the confidential business information until concerned parties have had a reasonable opportunity to review and comment on the protective order and to apply to the court for further protection. It is the FTC's policy not to oppose a court appearance by concerned parties for this purpose.

Commission regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under FOIA, 5 U.S.C. § 552. 47 C.F.R. § 0.457(d), 0.459(d). Consistent with our regulations and the cable operators' expectations that identification of the sources of particular data will be protected, we have requested that the FTC not disclose the sources of particular data collected by the Commission in the cable price survey.

Any questions regarding this matter should be directed to Michael Perko at 202-418-7021 or michael.perko@fcc.gov.